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SERVICE DATE - NOVEMBER 30, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33942

USX CORPORATION—CONTROL EXEMPTION—TRANSTAR, INC.

Decided: November 22, 2000

On October 5, 2000, Transtar Holdings, L.P. (Holdings), Transtar, Inc. (Transtar), and USX Corporation (USX) (jointly, petitioners) filed a petition under 49 U.S.C. 10502 to exempt from the prior approval requirements of 49 U.S.C. 11323-25 the acquisition by USX of control of Transtar and five rail carriers currently owned by Transtar. We will grant the exemption.

BACKGROUND

Prior to 1988, USX controlled 8 rail carriers: (1) the Bessemer and Lake Erie Railroad Company (BLE), a Class II carrier operating in western Pennsylvania and northeastern Ohio; (2) the Birmingham Southern Railroad Company (BSRC), a Class III terminal and switching carrier serving industries in Ensley, Fairfield and Bessemer, AL; (3) the Duluth, Missabe and Iron Range Railway Company (DMIR), a Class II carrier operating in northeastern Minnesota and northwestern Wisconsin; (4) the Elgin, Joliet and Eastern Railway Company (EJE), a Class II carrier operating in and around Chicago from Waukegan, IL to Gary, IN; (5) the Lake Terminal Railroad Company (LT), a Class III switching carrier operating in Lorain, OH; (6) the McKeesport Connecting Railroad Company (MKC), a Class III switching carrier operating in McKeesport, PA.; (7) the Pittsburgh & Conneaut Dock Company (P&C), a Class III carrier conducting stevedoring operations at B&LE's bulk material handling facility at Conneaut, OH; and (8) the Union Railroad Company (URR), a Class III carrier operating from North Bessemer, PA, to Clairton Junction, PA, where it divides, with the main line running to Clairton, and a branch line running to Mifflin Junction, PA. In 1988, USX formed Transtar as a corporate subsidiary to hold the stock of the 8 rail carriers.

Blackstone Capital Partners, L.P. (BCP) and Blackstone Transportation Partners, L.P. (BTP) subsequently acquired control of Transtar and USX's carrier subsidiaries, although USX retained a minority interest in Transtar. See Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P., and USX Corporation—Exemption from 49 U.S.C. 10746, 11321, and 11343, Finance Docket No. 31363 (ICC served Dec. 23, 1988), and Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P.—Control Exemption—The Pittsburgh and Conneaut Dock Company, Finance Docket No. 32028 (ICC served Aug. 14, 1992). In 1993, BTP and BCP reorganized their holdings of Transtar voting stock and changed BTP's corporate name to Holdings. See Transtar Holdings, L.P.—Corporate Family Exemption—Transtar, Inc., Finance

Docket No. 32411 (ICC served Dec. 29, 1993). At present, Holdings controls Transtar by owning 51% of Transtar's voting stock, while USX holds 49% of Transtar's voting stock.

Petitioners indicate that they have entered into a Reorganization and Exchange Agreement,¹ under which Holdings will transfer its Transtar stock to Transtar. In exchange, Transtar will transfer to Holdings its stock in BLE, DMIR, and P&C.² After the stock is exchanged, Holdings will have divested its interests in Transtar, BSRC, EJE, LT, MKC, and URR and become direct owner of 100% of the stock of BLE, DMIR, and P&C. USX would own 100% of the stock of Transtar and re-acquire sole control of BSRC, EJE, LT, MKC, and URR.³ USX's re-acquisition of control is subject to our jurisdiction.

Petitioners indicate that they intend to maintain the same level of transportation services currently provided by the Transtar subsidiaries. Petitioners state further that they intend to reorganize certain administrative and support functions, but that these changes are not expected to affect transportation services.

DISCUSSION AND CONCLUSIONS

The acquisition of control of at least 2 rail carriers by an entity that is not a rail carrier requires prior approval by the Board under 49 U.S.C. 11323(a)(4). Under 49 U.S.C. 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is limited in scope; or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction is not necessary to carry out the rail transportation policy. Rather, an exemption will promote that policy by minimizing the need for Federal regulatory control over the transaction and reducing regulatory barriers to entry [49 U.S.C. 10101(2) and (7)] and ensuring that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)]. Petitioners will unify the ownership

¹ A copy of the Reorganization and Exchange Agreement was submitted as Exhibit H to the petition.

² Additional authorization is not required for Holdings to increase its controlling interests in BLE, DMIR and P&C.

³ USX would also acquire control of the Warrior and Gulf Navigation Company (WGN), a water contract carrier that operates primarily on the Black Warrior and Tombigbee Rivers between Birmingham and Mobile, AL. Board approval is not required for USX to acquire control of WGN, and the statute no longer restricts a rail carrier from controlling or having an interest in a competing water carrier .

interests in the Transtar subsidiaries while maintaining the same level of transportation services currently provided by those carriers, thus fostering sound economic conditions in transportation, ensuring effective coordination among carriers, and encouraging efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the transaction is not needed to protect shippers from an abuse of market power. There would be no adverse impact on rail operations or any lessening of rail competition as a result of the proposed transaction. The proposed transaction, if anything, would diminish market power because the carriers presently controlled by Transtar would be divided between USX and Holdings. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Petitioners assert that the proposed transaction would have no significant impact on employees but would require only a limited rearrangement of employees. They claim that they do not intend to change overall employment levels or to relocate employees. Petitioners state further that they will remain bound by the collective bargaining agreements in effect at the time the proposed transaction is consummated. Finally, petitioners indicate they would agree that the labor protection conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), are appropriate. Those conditions will be imposed here.

This control transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

Petitioners request expedited action on the petition for exemption so that they can close the transaction by December 15, 2000. The request is reasonable. We will grant the request by shortening the effective date of the exemption from the normal 30-day period to 15 days.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt, from the prior approval requirements of 49 U.S.C. 11323-25, USX's control of Transtar and BSRC, EJE, LT, MKC, and URR, subject to the labor protection conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).
2. Notice will be published in the Federal Register on November 30, 2000.

3. This exemption will be effective on December 15, 2000. Petitions for stay must be filed by December 5, 2000. Petitions for reconsideration must be filed by December 20, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary